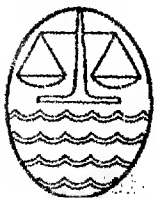




UNITED NATIONS



**THIRD CONFERENCE
ON THE LAW OF THE SEA**

PROVISIONAL

For participants only

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30 July 1974

ORIGINAL: ENGLISH

Second Session

THIRD COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE TENTH MEETING

Held at the Parque Central, Caracas,
on Friday, 26 July 1974, at 3.30 p.m.

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| <u>Chairman:</u> | Mr. YANKOV | Bulgaria |
| <u>later:</u> | Mr. JACOVIDES | Cyprus |
| <u>Rapporteur:</u> | Mr. HASSAN | Sudan |

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The co-operation of participants in strictly observing this time-limit would be greatly appreciated.

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REPORTS OF THE CHAIRMEN OF THE INFORMAL MEETINGS ON ITEMS 12 (Preservation of the marine environment) AND 13 AND 14 (Scientific research - Development and transfer of technology)

The CHAIRMAN drew the attention of delegates to the following documents which had been circulated and which were pertinent to the deliberations of the Committee:

The Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area which had been circulated for reference at the request of the representative of Denmark; conference room paper MP/2; conference room paper MP/3/Add.1 containing proposals and amendments to WG.2/Paper No. 8/Add.2 in the Informal Comparative Table of Texts on the Preservation of the Marine Environment (conference room paper MP/1) and to the texts contained in pages 86 to 88 of document A/9021.

Mr. VALLARTA (Mexico), speaking as Chairman of the informal meetings dealing with item 12, said that discussions had taken place on the morning and afternoon of 24 July and on the morning of 25 July. It had been decided to have a fresh reading of the texts prepared by the Sea-Bed Committee contained in document A/9021. It had also been decided that:

(1) There would be no general debate on texts or amendments during the present reading;

(2) Delegations wishing to make amendments or revisions should submit them together with the relevant explanations when each text was being considered;

(3) There should be no interventions either for or against proposals during the consideration of texts;

(4) The Secretariat should reproduce amendments and additions for the use of the small informal negotiation and drafting group to be set up with a view to reaching agreement on specific texts and reducing alternatives to a minimum. That group would consist mainly of sponsors of amendments or additions and would be open to participation by all States;

(5) The small informal negotiation and drafting group would not meet at the same time as the Third Committee or any of its subsidiary organs in order to enable smaller delegations to participate fully if they so wished.

Proposals, amendments, additions and explanations concerning WG.2/Papers No. 3, 8 and Add.2, 9, 7, and 10 and Add.1 had already been considered. Those documents, together with the working papers and documents of the Sea-Bed Committee would form the basis for the work of the small informal negotiation and drafting group. WG/Papers 11, 12, 13, 14 and 15 had not yet been considered.

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(Mr. Villarta, Mexico)

The CHAIRMAN drew the attention of the Committee to the fact that each of the informal working groups had only eight full working days left for their deliberations. If the groups continued to review work already done, the final outcome would not be very encouraging. He would welcome any development of a procedural nature which might expedite their work. Though no proposals were forthcoming, he assumed that the Committee had taken note of the informal deliberations with deep concern.

Mr. HETTERNICH (Federal Republic of Germany), speaking as Chairman of the informal meetings on items 13 and 14, made a progress report. The Third Committee had held three informal meetings on 23 and 25 July, on items 13 and 14 of the lists of subjects and issues. To date, 132 speakers had taken the floor and thirteen informal proposals had been introduced in writing and would be made available in all official languages. In addition, two informal meetings had been held for ad hoc consultations with interested delegations.

The informal meetings had based their work on the set of formal proposals introduced in Sub-Committee III of the Sea-Bed Committee in 1973 and texts produced during the informal consultations at the 1973 Geneva Session of Working Group 3 of that Sub-Committee. At the request of some delegations, an informal comparative table containing the above-mentioned proposals and texts had been issued by the Secretariat (conference room paper Sc. Res./1). The table had been revised after an exchange of views and an informal meeting on 23 July. It did not, of course, preclude in any way the informal or formal introduction of new proposals. The informal meetings had considered point 1 of the comparative table and had carried out a first reading of the text on page 45 of that document. It had received four informal proposals, two of which were contained in conference room paper Sc. Res./2 and 4; further proposals would be issued for the next meeting of the informal session.

Alternative texts concerning the question of the legal implications of marine scientific research (CRP/Sc. Res./1, page 45) had also been considered. Discussions had eventually centred on a single, new informal proposal contained in conference room paper Sc. Res./3. In particular the words "national jurisdiction" seemed to be controversial. An amendment had been submitted by a delegation and would be issued as a document for the next meeting. The question had been raised as to whether the words "national jurisdiction" should remain in the text of proposals on the explicit understanding that the use of the term "national jurisdiction" would not prejudice its

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(Mr. Metternich, Federal Republic
of Germany)

meaning and scope which would be defined in the Convention. Interested delegations had been invited to hold informal consultations to find a compromise solution.

The informal meeting held on 25 July had considered point 2 of the informal comparative table (CRP/Sc.Res./1, pages 45 to 47) and various informal proposals which would be issued before the next informal meeting.

When appropriate, the setting up of informal consultation groups composed of sponsors of proposals would be considered, particularly with regard to items which had not been discussed in the Sea-Bed Committee and for which there had been no attempt to consolidate texts.

The CHAIRMAN said that his remarks concerning the progress of the discussions on item 12 were even more valid with regard to items 13 and 14. As there was a lack of specific proposals on item 14, he appealed to delegations to submit proposals on that very important issue.

Mr. YTURRIAGA BARBERAN (Spain) requested that document A/CONF.62/C.3/L.1, which contained the text of the Helsinki Convention in English, should be translated and circulated in all working languages.

Mr. AUCHERE (France), Mr. GAMBOA (Chile) and Mr. RODRIGUEZ (Venezuela) supported that proposal.

Mr. KOVALEV (Union of Soviet Socialist Republics) said that the official Russian translation of the Helsinki Convention would be made available in the near future. He would therefore prefer the Convention not to be translated into Russian by the Secretariat so as to avoid having two different Russian versions.

He asked why the Helsinki Convention had been issued as document A/CONF.62/C.3/L.1, rather than as an information document, and suggested that the reference symbol of the document should be changed.

Mr. STEINER (Secretary of the Committee) recalled that the Committee had decided to issue the text of the Convention in English only, because States parties to the Convention were to receive the official Russian translation later.

Mr. YTURRIAGA BARBERAN (Spain) reiterated his request for a translation into Spanish of the text of the Helsinki Convention. If the Soviet delegation so desired, it need not be translated into Russian.

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The CHAIRMAN said that, if he heard no objection, he would take it that the Committee decided to have the text of the Helsinki Convention translated and circulated in all the working languages of the Conference, with the exception of Russian, and that when the official Russian translation was received, it would be published.

It was so decided.

PRESENTATION OF PROPOSALS ON ITEM 12 (PRESERVATION OF THE MARINE ENVIRONMENT)

Mr. MBOTE (Kenya) introduced his delegation's revised draft articles for the preservation and protection of the marine environment (A/CONF.62/C.3/L.2). His delegation had participated in the work of the United Nations Sea-Bed Committee and in the negotiations during the present Conference. As a result, it had considered it necessary to reformulate and elaborate the draft articles originally submitted to the Sea-Bed Committee (A/AC.138/SC.3/L.41) and to incorporate certain new ideas.

His Government attached great importance to the preservation, protection and improvement of the human environment including the marine environment. As a coastal State, Kenya had a special interest in the mineral and living resources of the sea. Furthermore, it was located near one of the busiest oil tanker routes in the world. In recent years, Kenya had made substantial investments in the development of tourism which was based mainly on its immense wild life resources and beaches, both of which depended on proper maintenance of the health of its land and marine environment.

His delegation considered that sovereignty and jurisdiction over the marine resources of the economic zone were inseparable from the juridical rights of the coastal States to protect and preserve the environment which contained those resources. In that connexion, he mentioned the draft articles on the economic zone submitted by his delegation to the Sea-Bed Committee (A/AC.138/SC.3/L.10). Furthermore, his delegation held the view that pollution of the marine environment in areas beyond the limits of national jurisdiction could have direct effects on zones under national jurisdiction.

Articles 3, 4, 5, 6, 7, 8, 9 and 10 contained provisions regarding the duties and obligations of States, of the proposed international authority and of other international bodies to protect and preserve the quality and resources of the marine

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(Mr. Mbote, Kenya)

environment and to take appropriate anti-pollution measures. Such measures, of course, should not interfere unjustifiably with the other legitimate uses of the sea.

There was an obvious need to co-ordinate co-operation among States and international bodies. His delegation considered that the United Nations Environment Programme was the most suitable international organization to undertake that responsibility. Article 11 contained provisions to that end. The modalities of such co-operation were provided for in articles 12 to 16.

Referring to the need to increase the capabilities of States to fulfil their duties and obligations in regard to the prevention of pollution and the protection of the marine environment, he appealed to the relevant specialized agencies of the United Nations to increase their efforts in the promotion of scientific, educational, technical and other assistance to developing countries, particularly in Africa, which at the present time lagged behind all other continents with regard to the volume of landed marine living resources, in spite of the fact that the waters surrounding the continent were considerably fertile.

His delegation also considered that developed States should play a major role in enhancing developing States' capabilities to explore, exploit and rationally manage marine resources for the benefit of mankind as a whole, through appropriate joint ventures or other bilateral arrangements.

Articles 19 and 20 provided for the development and utilization of monitoring facilities.

With regard to the establishment of rules and regulations, his delegation considered that States should co-operate on a regional or international basis to formulate uniform and enforceable standards with regard to areas within the limits of national jurisdiction taking into account special situations such as straits, the Arctic and Antarctic regions, enclosed and semi-enclosed seas and archipelagic waters, on the lines of the provisions of articles 21 and 23. Similarly, article 22 provided for the adoption by the authority of appropriate rules and regulations in areas beyond the limits of national jurisdiction. His delegation considered that the United Nations Environment Programme should play an important role in the formulation of standards, as stated in article 24.

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(Mr. Mbote, Kenya)

Articles 25 to 28 had been formulated with a view to ensuring that the States and authority would undertake to enforce national or internationally adopted rules and regulations against marine pollution from all sources in the areas under their respective jurisdiction.

In the view of his delegation, the question of liability was a matter for courts to determine. However, it considered that States and the authority should be held responsible for damage to the marine environment under the terms of articles 29 and 30.

His delegation's views on the question of compensation for damage were still under consideration but it favoured full compensation to the coastal State for damage caused. With regard to the question of the settlement of disputes arising from the interpretation or application of the foregoing articles, his delegation was of the opinion that the coastal State was competent to settle all disputes arising within the limits of national jurisdiction, while disputes arising from the areas beyond the limits of national jurisdiction should be settled through the appropriate international judicial institutions.

In conclusion, he emphasized his delegation's willingness to consider comments on the draft articles it had submitted in a true spirit of negotiation.

Mr. PAPAGEORGIOU (Greece) said that regulations and enforcement were two of the most basic and most controversial parts of the Committee's work, and represented two distinct areas. For that reason, his delegation had chosen to concentrate on enforcement and submit a complete draft (A/CONF.62/C.3/L.4) on that subject which provided a method for the enforcement of whatever regulations the Conference would subsequently adopt.

In submitting those draft articles, his delegation was motivated by the desire to provide a basis for compromise, since various drafts submitted by other delegations, while useful and constructive, did not seem adequate for that purpose.

The classification and arrangement of the subject matter in document A/CONF.62/C.3/L.4 was important, and could assist the Committee's further deliberations even if its treatment of substantive issues could not be accepted.

That method for enforcing regulations relating to ship-based pollution should be effective without creating, however, unreasonable obstacles for international navigation or unnecessarily subjecting ships to the control of a multitude of national authorities. For that purpose, the draft articles created specific obligations for the flag State to

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(Mr. Papageorgiou, Greece)

enforce the convention and provided for supplementary enforcement by the coastal State or the port State where the flag State could not or did not proceed to enforcement within a specified time limit.

Articles 1 and 2 were not controversial. Article 3 was inspired by the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Materials and should not prove controversial either.

The process of enforcement had been divided into the three separate phases of inspection (article 5), proceedings (article .), and enforcement of sentences (article 8) to facilitate compromise. In article 6 distinctions had been made among different kinds of violations committed in various zones of the sea also to facilitate an acceptable solution. Article 7 concerning the non-duplication of proceedings should be generally acceptable. Article 8 created a world-wide network for the punishment of those who violated the convention.

Article 9 which included provisions similar to those of the 1973 IMCO Convention for the Prevention of Pollution from Ships should not cause difficulties.

The Greek delegation did not claim that its draft articles were perfect, and it was prepared to accept additions, amendments, and criticism which might improve the draft. The text was offered as a compromise or at least as a valid basis for compromise negotiations. The primary right of the coastal State to enforce regulations concerning land-based and sea-bed pollution, as well as extensive supplementary rights to enforce regulations against ship-generated pollution had been recognized, thus accommodating the zonal approach. Finally an important role had been given to the port State for the enforcement of the Convention.

The time had come to bring opposing views closer together. Since the first part of every article provided a neutral framework with the points for negotiation concentrated in the last one or two lines of each article, the proposed draft was a useful tool for negotiations.

Mr. ODA (Japan) said he wished to make several preliminary observations concerning the Kenyan and Greek draft articles.

He noted the many references to the international authority in the Kenyan draft and the fact that its powers, for the purpose of establishing binding standards to control pollution, would, as envisaged in article 8, extend to the water column beyond the limits of national jurisdiction. If by the international authority the Kenyan draft

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(Mr. Oda, Japan)

meant the international sea-bed authority which was under consideration in the First Committee, it should be pointed out that there was no thought of granting a competence to the international sea-bed authority as wide as that proposed in the Kenyan draft. His delegation favoured the establishment of a proper order in the seas beyond national jurisdiction, but did not however see the need for any international organization to regulate activities in that area.

The Kenyan draft articles emphasized the close link between the resources jurisdiction of the coastal State and its competence to prevent marine pollution in the areas adjacent to its coasts. Japan had submitted a proposal (A/AC.138/SC.III/L.49) to the Sea-Bed Committee the previous summer which embodied a zonal approach to pollution control, but the intended zone over which the coastal State's competence for pollution control was to be extended was completely different in nature and in breadth from any resources jurisdiction.

With regard to the competence for enforcing standards to prevent marine pollution, his delegation favoured the flag-State formula as it had explained at the fifth meeting of the Committee. The Japanese delegation was aware however that the flag-State formula alone might not suffice to prevent marine pollution. For that reason, it would be appropriate to give certain enforcement powers to the coastal State. The standards to be enforced by the coastal State had to be international, not national, since it was difficult to accept the idea that coastal States should be able to enforce national standards on vessels in transit. The coastal State should have competence in cases of dumping or discharge in violation of international standards.

Turning to the Greek draft articles, he wondered about the suitability of the six-month period allowed in article 6 for the flag State to institute proceedings before the coastal State or any port State might do so, since it was not unusual for a ship not to return to a port of its flag State within that period. In addition, there was no great incentive for port States to initiate proceedings with regard to pollution violations which took place far from their own territories.

He wished to request a clarification with regard to the enforcement of sentences by any port State, since the enforcement of foreign judgements posed certain problems in view of the national legislation of many countries.

Mr. APPLETON (Trinidad and Tobago) observed with regard to article 2 of the Greek draft articles that pollution arising from the exploration and exploitation of the

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(Mr. Appleton, Trinidad and Tobago)

sea-bed normally had its origin in off-shore oil wells, pipelines, or natural seepage. Mention of the flag State therefore seemed irrelevant in connexion with such pollution and he requested a clarification from the Greek representative.

Mr. PAPAGEORGIOU (Greece), replying to the question asked by the representative of Japan concerning article 6, paragraph 2, of document A/CONF.62/C.3/L.4, said that he would be willing to negotiate on the proposed time-limit of six months, although he himself felt that it would be quite adequate. In connexion with the difficulty of enforcing foreign judgements, mentioned by the representative of Japan, he said that although there might be some difficulty for some States, the Conference was trying to create a new law for effective control of marine pollution, and sentences for violation of provisions concerning the prevention of pollution should not be regarded as civil or criminal sentences but should be treated differently. The provision in article 6, paragraph 2, of the draft that the coastal State could institute proceedings in case of violation of regulations within the economic zone amounted to a concession by his delegation. The intention was that if the flag State took no action, the coastal State which had suffered the damage should take action and, if the vessel had already left the area, the port State should be placed under an obligation to take action. The purpose of authorizing the coastal State to request any port State to institute proceedings was to avoid unnecessary stoppage of ships in transit.

Replying to the representative of Trinidad and Tobago who had requested clarification of article 2 of the draft, he said that the coastal State had the primary right to enforce compliance with regulations in the area under its national jurisdiction; it was to make enforcement even more effective that the flag State should also be obliged to ensure compliance with regulations. Thus, the coastal State and the flag State would ensure compliance in the economic zone, and the flag State would enforce compliance in areas beyond national jurisdiction. He interpreted "flag State" as referring to any State with which a ship was registered and also any State in which installations that could cause pollution, such as drilling platforms, were registered. Article 7 of the draft explained which State should be primarily responsible for enforcing the convention.

He stressed that the main aim of the draft articles was to impose the obligation on States to enforce compliance with provisions for the protection of the marine environment, rather than to grant rights to States.

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Mr. RASHID (Bangladesh) requested clarification of the implications of article 5, paragraph 2, of the draft articles submitted by Greece (A/CONF.62/C.3/L.4). The use of the word "serious" to qualify pollution seemed to him to introduce a subjective element and made the right of the coastal State to inspect ships subject to certain conditions. He felt that the coastal State should have the same right as the flag State to inspect ships at any time deemed appropriate.

He also requested clarification of the relationship between article 6, paragraph 2, and article 8. Article 6, paragraph 2, stated that if the flag State took no action, the coastal State or any port State could take action, while article 8 provided for enforcement of the sentence only by the port State. Article 7 referred to the "contracting State", which could even refer to land-locked States.

Mr. PAPAGEORGIOU (Greece), replying to the representative of Bangladesh, offered to negotiate with regard to the use of the word "serious" in article 5, paragraph 2, of the draft, as he agreed that it might introduce a subjective element. He did not agree that the coastal State should have the same right of inspection as the flag State, however. Inspection was limited to verifying that there was a valid certificate; if the word "serious" was deleted, the coastal State, the State through whose territorial sea or economic zone the ship was in transit, could stop a ship at any time to verify its certificate. He stressed the need to avoid, as far as possible, stoppage of ships in transit.

With regard to article 6, paragraph 2 of the draft, he said that the purpose of authorizing the coastal State or any port State, as well as the flag State, to take action, was to impose obligations on as many States as possible to enforce the convention and any sentence for violation. Article 6 was consistent with article 8. The port State should enforce the sentence so that there would be no unnecessary stoppage of ships in transit.

With regard to article 7, he said that articles 2, 3 and 6, referred to in article 7, would not give land-locked countries the right to enforce the convention unless they were flag States.

Mr. HASSAN (Sudan), Rapporteur, commenting on article 5, paragraph 2, of the draft articles submitted by Greece, (A/CONF.62/C.3/L.4) expressed agreement with the representative of Bangladesh that the use of the word "serious" introduced a subjective

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(Mr. Haseen, Sudan)

element. He also suggested that the word "substantially" in article 5, paragraph 4, introduced another subjective element. If the certificate was valid, the condition of the ship should surely correspond substantially to the particulars in the certificate.

Mr. PAPAGEORGIOU (Greece) said that the second sentence of article 5, paragraph 4, to which the representative of Sudan had referred, had been taken from the text of the Convention for the Prevention of Pollution, adopted in London in 1973. Article 5, paragraph 1 imposed the obligation for the flag State to inspect the ship regularly, and article 4, paragraph 3, imposed the obligation for the flag State to issue a certificate after due inspection, the certificate being valid for all States parties. The coastal or port State inspecting a ship should ensure that the proper certificate had been issued; if it had, no further action would be taken; if the ship proved unseaworthy, however, further action would be taken.

Mr. MBOTE (Kenya), replying to comments made by the representative of Japan on the draft articles submitted by his delegation contained in document A/CONF.62/C.3/L.2, said that the international authority should be empowered to enforce compliance with provisions for the prevention of pollution in areas beyond national jurisdiction, because pollution in such areas could easily drift to areas under national jurisdiction. Some authority must ensure that the standards were complied with in the international area. Activities in the water column should also be controlled and regulated, perhaps not by the international authority, but by some body such as the FAO fisheries commissions. His delegation did not feel that it would be too cumbersome to give the international authority, whose establishment was being considered by the First Committee, powers to ensure that provisions for the prevention of pollution were complied with. His delegation would make the necessary relevant proposals in the appropriate forum.

The meeting rose at 5.40 p.m.